

THE UNITED REPUBLIC OF TANZANIA
(JUDICIARY)
THE HIGH COURT
(MUSOMA SUB REGISTRY AT TARIME)
ORIGINAL JURISDICTION
CRIMINAL SESSIONS CASE No. 163 OF 2022
THE REPUBLIC
v.
ELIJA THOMAS PATRICK @ PATRICE ANTHONY PATRICK
RULING

24.11.2023 & 24.11.2023

Mtulya, J.:

Citations of section 34B(2) of the **Evidence Act [Cap. 6 R.E. 2022]** (the Evidence Act), sections 246(2) & 289(1) of the **Criminal Procedure Act [Cap. 20 R.E. 2023]** (the Act) and Item 3(6)(1) and 2(4)(2) of the **Judiciary of Tanzania Exhibits Management Guidelines, 2020** (the Exhibits Guidelines) spiced by precedents in **Fredy Stephano v. Republic**, Criminal Appeal No. 65 of 2007 and **Juma Ismail & Another v. Republic**, Criminal Appeal No. 501 of 2015, was displayed by **Mr. Paul Obwana** and **Mr. Otieno Onyango**, Defence Attorneys for the accused in the present case to protest admission of intended exhibit D which was identified by Handwriting Expert, **Mr. Mosses Massawe** (PW14) and is cited in exhibit P. 9 which was tendered in the case by the same PW14.

According to the Defence Attorneys, the exhibit was brought without notice or attention of the accused during committal proceedings and today PW14 prays to produce in court without first identifying specific marks. In replying the protest, the Republic submitted that there is confusion on part of the Defence Attorneys in refusing admission of exhibits by citing section 34B (2) of the Evidence Act and Item 3 (6) (1) and 2 (4) (2) of the Exhibits Guidelines.

According to **Mr. Tawabu Yahya Issa**, learned State Attorney for the Republic, the indicated provisions regulate statements of persons who cannot be called as witness due to their previous recorded witness statement whereas the present intended exhibit is not a statement. In his opinion, PW14 had cited the document and mentioned its two specific marks as letter D and it was written by a pencil, and for the purposes of the identification of the special marks, the two cited marks are quietly enough.

Mr. Tawabu thinks that the document was found on the record and collection of the deceased's estates and that it will be unfortunate to display the details questioned by the Defence Attorneys as the deceased did not intend for the document to be exhibit. Mr. Tawabu submitted further that the requirement of section 246 (2) of the **Criminal Procedure Act [Cap. 20 R.E. 2022]**

(the Act) was complied and the document was cited during committal proceedings at Tarime District in Criminal Preliminary Inquiry Case. Finally, Mr. Tawabu submitted that this court is empowered, under section 145 (2) of the Evidence Act, to admit necessary materials in searching the truth of the case. In rejoining the submission **Mr. Obwana** insisted that the Republic did not comply with sections 246 (2) and 189 (2) of the Act and that Mr. Tawabu has declined to reply precedents in **Fredy Stephano v. Republic** (supra) and **Juma Ismail & Another v. Republic** (supra) hence the point of objection may be resolved in favour of the defence side.

In the present dispute, parties are generally at horns on the enactment of section 246 (2) of the Act which requires reading and explaining materials of the prosecution side to the defence side during **Committal Proceedings** (the proceedings) at the **District Court of Tarime at Tarime** (the district court) in **Criminal Preliminary Inquiry Case No. 12 of 2021** (the PI case). Mr. Obwana articulated that there is no display of the materials during the proceedings whereas Mr. Tawabu uttered that the materials were displayed.

I have perused the record of the proceedings and found that page 7 of the proceedings shows several items and Serial No. 8

displays: **Report of the Handwriting Examination** (the handwriting report) attached with samples of Handwritten of **Eliza Thomas Patrick @ Patrice Anthony Patrick** (the accused) and **Lucy Stephen Sebe** (PW10) and the handwriting expert report was admitted as Exhibit P. 9 in this court. Exhibit P.9 was attached and read during the proceedings at the district court, but was not attached with the intended exhibit D. However, the intended exhibit D was cited at the final paragraph in page 3 of Exhibit P. 9.

The question before this court is therefore is whether the citation of the intended exhibit D in Exhibit P.9 is sufficient enough to let the accused aware of the contents of the intended exhibit D. The reply, however, depends on the interpretation of each particular persons, the Republic and Defence. On my side, I think the issue may not necessary be whether the citation of the intended exhibit D in Exhibit P.9 is sufficient enough to let the accused aware of the contents of the intended exhibit D, but whether the defence was aware of the intended exhibit D in P.9 and its production in the case by the Republic.

The present intended exhibit D is important material in relation to the facts of the case. The intended exhibit is invited in trying to reply a question whether the handwriting found in the intended exhibit D, which is allegedly written by the deceased in

similar to the one found in NMB Bank withdraw slip. The question whether the protest is properly staged at this point in time cannot retain this court. The reason is obvious that Item 2.4 of the Exhibits Guidelines regulates tendering of exhibits and the prayer registered by PW14 concerns tendering of the intended exhibit D. It is therefore certain that both the prayer and protest were registered at appropriate time.

I am aware of the complaint on section 289 (1) of the Act. However, the intended exhibit D was cited during proceedings of the district court in the PI case. I think there is no need of a notice to produce the intended exhibit D.1. In that situation, all complaints related to knowledge of the accused with regard to the intended exhibit D.1 is resolved.

I recognise the complaint on the authenticities or address of the intended exhibit D.1. However, that is a matter of evidence which is not necessary to be part of the protests at this moment. Regarding precedents in **Fredy Stephano v. Republic** (supra) and **Juma Ismail & Another v. Republic** (supra) are accommodated by presence of exhibit P.9 in the proceedings of the district court in PI case, which has cited the intended exhibit D.

In the end, I admit the intended exhibit D in the case under section 145 (2) of the Evidence Act and its authenticity and weight

will be resolved in judgment. Having said so I mark the intended exhibit D as Exhibit P. 15.

It is so ordered.

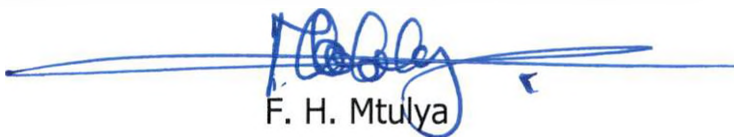



F. H. Mtulya

Judge

24.11.2023

This Ruling was delivered in open court in the presence of accused, **Mr. Elija Thomas Patrick @ Patrice Anthony Patrick** and his learned Defence Attorneys, **Mr. Otieno Onyango** and **Mr. Paul Obwana** and in the presence of **Mr. Tawabu Yahya Issa** and **Mr. Davis Katesigwa**, learned State Attorneys for the Republic.


F. H. Mtulya

Judge

24.11.2023